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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 ACER, INC., ACER AMERICA
13 CORPORATION and GATEWAY, INC.,

Case No. 5:08-cv-00877 JF/HRL

14 Plaintiffs,

15 v.

16 TECHNOLOGY PROPEORTIES
17 LIMITED, PATRIOT SCIENTIFIC
CORPORATION, and ALLIACENSE
LIMITED,

18 Defendants.

19 HTC CORPORATION, HTC AMERICA,
20 INC.,

Case No. 5:08-cv-00882 JF/HRL

21 Plaintiffs,

22 v.

23 TECHNOLOGY PROPERTIES
24 LIMITED, PATRIOT SCIENTIFIC
CORPORATION, and ALLIACENSE
LIMITED,

25 Defendants.

28 Case Nos. 5:08-cv-00877; 5:08-cv-00882; 5:08-cv-05398
JOINT CLAIM CONSTRUCTION AND PREHEARING
STATEMENT

1 BARCO N.V., a Belgian corporation,
 2 Plaintiff,
 3 v.
 4 TECHNOLOGY PROPERTIES LTD.,
 5 PATRIOT SCIENTIFIC CORP.,
 ALLIACENSE LTD.,
 6 Defendants.

Case No. 5:08-cv-05398 JF/HRL

**PATENT LOCAL RULE 4-3 JOINT
 CLAIM CONSTRUCTION AND
 PREHEARING STATEMENT**

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 8 To maximize the efficiency to the Court, the parties from all three above-captioned related
 9 actions, Plaintiffs Acer Inc., Acer America Corp., and Gateway, Inc. (collectively “Acer”), HTC
 10 Corporation and HTC America Inc. (collectively “HTC”), and Barco, N.V. (“Barco”) and
 11 Defendants Technology Properties Limited (“TPL”), Patriot Scientific Corporation, and
 12 Alliacense Limited (collectively “Defendants”), hereby submit the following consolidated Joint
 13 Claim Construction and Prehearing Statement pursuant to Patent Local Rule 4-3.

14 **I. AGREED CLAIM CONSTRUCTIONS**

15 Exhibit A sets forth a list of claim terms and their respective constructions that have been
 16 agreed upon by all the parties in the related actions.

17 **II. DISPUTED CLAIM CONSTRUCTIONS**

18 Exhibit B is a chart that sets forth all the disputed claim terms from U.S. Patent Nos.
 19 5,440,749; 5,530,890; 6,598,148; and 5,809,336 and the respective constructions proposed by
 20 each party. All four patents are at issue in the *Acer v. TPL* and *HTC v. TPL* actions, while only
 21 the ’749, ’890, and ’336 patents are at issue in the *Barco v. TPL* action.

22 The proposed identification of evidence for each disputed claim term provided by
 23 plaintiffs Acer, Barco and HTC is attached as Exhibit C.

24 The proposed identification of evidence for each disputed claim term provided by
 25 Defendants is attached as Exhibit D.

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1 **III. IDENTIFICATION OF MOST SIGNIFICANT CLAIM TERMS**
 2 **[APPLICABLE TO BARCO v. TPL ACTION ONLY]**

3 The *Acer v. TPL* and *HTC v. TPL* actions were filed in February 2008 and thus operate
 4 under the version of the Patent Local Rules published in December 2000. The requirement that
 5 the parties to identify most significant terms, therefore, applies only to the *Barco* action. The
 6 parties in *Barco v. TPL* hereby identify the following claim terms as being most significant to the
 7 resolution of the issues in that case:

- 8 1. multiple sequential instructions ('749 Patent)
- 9 2. separate direct memory access central processing unit ('890 Patent)
- 10 3. push down stack / stack ('749 and '890 Patents)
- 11 4. operates asynchronously to ('336 Patent)
- 12 5. supply the multiple sequential instructions to said central processing unit
 integrated circuit during a single memory cycle ('749 Patent)
- 13 6. clocking said central processing unit
- 14 7. ring oscillator ('336, '890, '749 Patents)
- 15 8. providing an entire variable speed clock disposed upon said integrated circuit
 substrate ('336 Patent)
- 16 9. an entire oscillator disposed upon said integrated circuit substrate ('336 Patent)
- 17 10. push down stack connected to said ALU ('749 Patent)

18 TPL proposes terms 1-4 of this list, which are all potentially claim dispositive. Barco
 19 proposes terms 5-10 of this list, which are all potentially claim dispositive.

20 **IV. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING**

21 The positions of plaintiffs Acer, Barco and HTC and defendants are set forth below.

22 **Plaintiff's Position:** Acer, Barco and HTC believe that oral argument on claim
 23 construction should take a half-day (approximately four hours) for all disputed terms as to all
 24 three related actions. Because the patents-in-suit derive from a common specification, and
 25 several terms are shared among more than one patent, many of the individually disputed terms
 26 will present questions of claim construction in common with other terms and many terms involve
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1 similar conceptual positions by each party. Acer, Barco and HTC further believe that Defendants
 2 (below) vastly overestimate the time necessary for oral argument on claim construction and are
 3 confident that the parties can properly allocate their time to address all of the relevant issues
 4 within a half day.

5 Acer and HTC also disagree that claim construction should be limited to 10 terms decided
 6 by parties pursuant to a Local Rule that does not apply to the Acer and HTC actions. There are
 7 four patents at issue in the Acer and HTC actions, with 23 claims asserted against Acer and 26
 8 against HTC. The number of disputed terms reflects the unusually large number of asserted
 9 claims, as well as the fact that the asserted claims are longer and more complicated than in typical
 10 patent cases (many of them independent claims) containing numerous technical terms whose
 11 meanings are disputed. Moreover, several of the disputed terms are drafted in means-plus-
 12 function format and thus require construction.

13 Plaintiffs Acer and HTC believe that the number of disputed terms could be substantially
 14 reduced if Defendants were limited in the number of claims asserted. A limitation in the asserted
 15 claims is particularly appropriate here considering that the USPTO has rejected many of the
 16 independent claims in the ongoing reexamination including claims 1 and 9 of the '749 patent,
 17 claims 4 and 7 of the '148 patent, and claims 1 and 2 of the '890 patent.

18 **Defendants' Position:** Defendants believe that 4 hours time will be sufficient for the
 19 Court to hear argument and evidence from all parties related to the most significant terms, as
 20 identified by the parties in the *Barco v. TPL* action above, but that substantial additional time (1
 21 full day) may be necessary to argue and present evidence on all of the "disputed" terms identified
 22 by the parties in Exhibit B. Defendants disagree with Plaintiffs' suggestion that Defendants
 23 should be limited in asserting infringed claims against Plaintiffs. Defendants also disagree with
 24 Plaintiffs' characterization of the effect of ongoing reexamination proceedings.

25 **V. WITNESSES FOR THE CLAIM CONSTRUCTION HEARING**

26 Defendants do not currently plan to call any fact or expert witness to testify live at the
 27 claim construction hearing. Defendants' expert, Dr. Vojin Oklobdzija, may submit testimony in
 28 rebuttal to evidence or argument advanced by Plaintiffs in connection with the claim construction

1 process, including in rebuttal to any expert testimony submitted by Plaintiffs.

2 Plaintiffs Acer and HTC do not plan to call witnesses to testify live at the claim
3 construction hearing, but will have their expert witnesses, Dr. Andrew Wolfe and Dr. David May,
4 respectively, available should the Court believe that such testimony would be useful in resolving
5 the disputed terms between the parties. Acer and HTC may submit declarations from Dr. Wolfe
6 and/or Dr. May in connection with claim construction briefing and will provide a summary of
7 their expert opinions as part of Exhibit C.

8 **VI. PREHEARING CONFERENCE**

9 The positions of plaintiffs Acer, Barco and HTC and defendants are set forth below.

10 **Plaintiffs' Position:** Plaintiffs believe a prehearing conference is unnecessary and that
11 the parties can adequately brief and argue the disputed claims so long as the page limits for the
12 briefs are expanded. Should the court wish to have a prehearing conference, Plaintiff Acer would
13 propose November 19, 2010.

14 **Defendants' Position:** Because the parties have reached an agreement to enter a
15 stipulation regarding page limitations for briefing, Defendants believe that an early pre-hearing
16 conference is unnecessary. Defendants would request that a pre-hearing conference be set
17 following the conclusion of all briefing (reply briefs are to be filed on February 11) to clarify the
18 amount of time necessary for the hearing and set a date for the claim construction hearing.

19
20 Respectfully submitted,

21 [SIGNATURE BLOCKS ON NEXT PAGE]

1 Dated: Oct. 28, 2010

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JOINT CLAIM CONSTRUCTION AND PREHEARING
STATEMENT

1 Dated: Oct. 28, 2010

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1 **ATTESTATION PER GENERAL ORDER 45**

2 I, Stephanie Powers Skaff, am the ECF User whose ID and password are being used to file
3 this Stipulation. In compliance with General Order 45, X.B., I hereby attest that the counsel listed
4 above have concurred with this filing.

5
6 Dated: October 28, 2010

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